

Introduced by Senator Speier

December 2, 2002

An act to add Division 1.2 (commencing with Section 4050) to the Financial Code, relating to financial privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1, as introduced, Speier. Financial institutions: nonpublic personal information.

Existing law provides for the regulation of banks, savings associations, credit unions, and industrial loan companies by the Department of Financial Institutions and by certain federal agencies. Existing federal law, the Gramm-Leach-Bliley Act, requires financial institutions to provide a notice to consumers relative to the use by the financial institution of nonpublic personal information, and in that regard authorizes consumers to direct that the information not be shared with nonaffiliated third parties.

This bill would enact the California Financial Information Privacy Act, which would require a financial institution, as defined, to provide a specified written form to a consumer relative to the sharing of the consumer's nonpublic personal information, as defined. The bill would allow a consumer to direct the financial institution to not share the nonpublic personal information with affiliated companies or with nonaffiliated financial companies with which the financial institution has contracted to provide financial products and services. The bill would require the permission of the consumer before the financial institution could share the nonpublic personal information with other nonaffiliated companies. The bill would provide that a financial institution is not required to provide this written form to its consumers



if the financial institution does not disclose any nonpublic personal information to any nonaffiliated 3rd party or to any affiliate.

This bill would provide that a financial institution shall not deny a consumer a financial product or service because the consumer has not provided the necessary consent that would authorize the financial institution to disclose or share nonpublic personal information. The bill would require a financial institution to comply with the consumer's request regarding nonpublic personal information within 45 days of receipt of the request.

This bill would provide that a financial institution may disclose nonpublic personal information to an affiliate or a nonaffiliated 3rd party in order for it to perform certain services on behalf of the financial institution if specified requirements are met. The bill would provide other exceptions from its provisions applicable to particular situations.

This bill would provide that nonpublic personal information may be released in order to identify or locate missing children, witnesses, criminals and fugitives, parties to lawsuits, and missing heirs and that it would not change existing law regarding access by law enforcement agencies to information held by financial institutions.

This bill would also provide for disclosure of nonpublic personal information under various other specified circumstances.

This bill would provide that enactment of these provisions preempts all local agency ordinances and regulations relating to this subject.

This bill would enact other related provisions.

This bill would also provide various civil penalties for negligent, or knowing and willful violations of these provisions. The penalties under the bill would not become operative until July 1, 2004.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 1.2 (commencing with Section 4050)
2 is added to the Financial Code, to read:

3

4 DIVISION 1.2. CALIFORNIA FINANCIAL
5 INFORMATION PRIVACY ACT

6

7 4050. This division shall be known and may be cited as the
8 California Financial Information Privacy Act.



1 4051. (a) The Legislature intends for financial institutions to
2 provide their consumers notice and meaningful choice about how
3 consumers' nonpublic personal information is shared or sold by
4 their financial institutions.

5 (b) It is the intent of the Legislature in enacting the California
6 Financial Information Privacy Act to afford persons greater
7 privacy protection than those provided in Public Law 106–102, the
8 federal Gramm-Leach-Bliley Act, and that this division be
9 interpreted to be consistent with that purpose.

10 4051.5. (a) The Legislature finds and declares all of the
11 following:

12 (1) The California Constitution protects the privacy of
13 California citizens from unwarranted intrusions into their private
14 and personal lives.

15 (2) Federal banking legislation, known as the
16 Gramm-Leach-Bliley Act, which breaks down restrictions on
17 affiliation among different types of financial institutions,
18 increases the likelihood that the personal financial information of
19 California residents will be widely shared among companies.

20 (3) The policies intended to protect financial privacy imposed
21 by the Gramm-Leach-Bliley Act are inadequate to meet the
22 privacy concerns of California residents.

23 (4) Because of the limitations of these federal policies, the
24 Gramm-Leach-Bliley Act explicitly permits states to enact
25 privacy protections that are stronger than those provided in federal
26 law.

27 (b) It is the intent of the Legislature in enacting this division:

28 (1) To ensure that Californians have the ability to control the
29 disclosure of personally identifiable financial information for
30 purposes other than those of the transactions into which they have
31 entered.

32 (2) To achieve that control for California consumers by
33 requiring that financial institutions that want to share information
34 with third parties and unrelated companies seek and acquire the
35 affirmative consent of California consumers.

36 (3) To further achieve that control for California consumers by
37 providing consumers with the ability to prevent the sharing of
38 financial information among affiliated companies through a
39 simple opt-out mechanism.

(4) To provide a level playing field among types and sizes of businesses, including providing that those financial institutions with limited affiliate relationships may enter into agreements with other financial institutions on an “affiliate-equivalent” basis, as defined in statute, and providing that the different business models of differing financial institutions are treated in ways that provide consistent consumer control over information-sharing practices.

(5) To adopt to the maximum extent feasible, definitions consistent with federal law, so that in particular there is no change in the ability of businesses to carry out normal processes of commerce for transactions voluntarily entered into by consumers.

4052. For the purposes of this division:

(a) “Nonpublic personal information” means personally identifiable financial information (1) provided by a consumer to a financial institution, (2) resulting from any transaction with the consumer or any service performed for the consumer, or (3) otherwise obtained by the financial institution. Nonpublic personal information does not include publicly available information that the financial institution has a reasonable basis to believe is lawfully made available to the general public from (1) federal, state, or local government records, (2) widely distributed media, or (3) disclosures to the general public that are required to be made by federal, state, or local law. Nonpublic personal information shall include any list, description, or other grouping of consumers, and publicly available information pertaining to them that is derived using any nonpublic personal information other than publicly available information, but shall not include any list, description, or other grouping of consumers, and publicly available information pertaining to them that is derived without using any nonpublic personal information.

(b) “Personally identifiable financial information” means information (1) that a consumer provides to a financial institution to obtain a product or service from the financial institution, (2) about a consumer resulting from any transaction involving a product or service between the financial institution and a consumer, or (3) that the financial institution otherwise obtains about a consumer in connection with providing a product or service to that consumer. Any personally identifiable information is financial if it was obtained by a financial institution in connection with providing a financial product or service to a

1 consumer, including the fact that a consumer is a customer of a
2 financial institution or has obtained a financial product or service
3 from a financial institution. Personally identifiable financial
4 information includes all of the following:

5 (1) Information a consumer provides to a financial institution
6 on an application to obtain a loan, credit card, or other financial
7 product or service.

8 (2) Account balance information, payment history, overdraft
9 history, and credit or debit card purchase information.

10 (3) The fact that an individual is or has been a consumer of a
11 financial institution or has obtained a financial product or service
12 from a financial institution.

13 (4) Any information about a financial institution's consumer if
14 it is disclosed in a manner that indicates that the individual is or has
15 been the financial institution's consumer.

16 (5) Any information that a consumer provides to a financial
17 institution or that a financial institution or its agent otherwise
18 obtains in connection with collecting on a loan or servicing a loan.

19 (6) Any personally identifiable financial information collected
20 through an Internet cookie or an information collecting device
21 from a Web server.

22 (7) Information from a consumer report.

23 (c) "Financial institution" means any institution the business
24 of which is engaging in financial activities as described in Section
25 1843(k) of Title 12 of the United States Code and doing business
26 in this state. An institution that is not significantly engaged in
27 financial activities is not a financial institution. The term
28 "financial institution" does not include the Federal Agricultural
29 Mortgage Corporation or any entity chartered and operating under
30 the Farm Credit Act of 1971 (12 U.S.C. Sec. 2001 et seq.),
31 provided that the entity does not sell or transfer nonpublic personal
32 information to an affiliate or a nonaffiliated third party. The term
33 "financial institution" does not include any provider of
34 professional services, or any wholly owned affiliate thereof, that
35 is prohibited by rules of professional ethics or applicable law from
36 voluntarily disclosing confidential client information without the
37 consent of the client.

38 (d) "Affiliate" means any entity that controls, is controlled by,
39 or is under common control with, another entity, but does not
40 include a joint employee of the entity and the affiliate. A



1 franchisor, including any affiliate thereof, shall be deemed an
2 affiliate of the franchisee for purposes of this division. A financial
3 institution and one or more of its affiliated entities shall be deemed
4 a single entity for purposes of this division to the extent that (1) the
5 financial institution and its affiliated entities are offering financial
6 products or services in conjunction with and as part of a business
7 that is significantly engaged in at least the following financial
8 activities: (A) investment management services, (B) portfolio
9 advisory services, and (C) financial planning, and (2) the
10 operations of the financial institution and its affiliated entities are
11 integrated and that integration facilitates the provision of those
12 services.

13 (e) “Nonaffiliated third party” means any entity that is not an
14 affiliate of, or related by common ownership or affiliated by
15 corporate control with, the financial institution, but does not
16 include a joint employee of that institution and a third party.

17 (f) “Consumer” means an individual resident of this state who
18 obtains or has obtained a financial product or service from a
19 financial institution, or that individual’s legal representative. For
20 purposes of this division, an individual resident of this state is
21 someone whose last known mailing address, other than an Armed
22 Forces Post Office or Fleet Post Office address, as shown in the
23 records of the financial institution, is located in this state. For
24 purposes of this division, an individual is not a consumer of a
25 financial institution solely because he or she is (1) a participant or
26 beneficiary of an employee benefit plan that a financial institution
27 administers or sponsors, or for which the financial institution acts
28 as a trustee, insurer, or fiduciary, (2) covered under a group or
29 blanket insurance policy or group annuity contract issued by the
30 financial institution, (3) a beneficiary in a workers’ compensation
31 plan, (4) a beneficiary of a trust for which the financial institution
32 is a trustee, or (5) a person who has designated the financial
33 institution as trustee for a trust provided that (A) the financial
34 institution provides all required notices and rights required by this
35 division to the plan sponsor, group or blanket insurance
36 policyholder, or group annuity contractholder and (B) the
37 financial institution does not disclose to any affiliate or any
38 nonaffiliated third-party nonpublic personal information about the
39 individual except as authorized in Section 4056.



1 (g) “Control” means (1) ownership or power to vote 25
2 percent or more of the outstanding shares of any class of voting
3 security of a company, acting through one or more persons, (2)
4 control in any manner over the election of a majority of the
5 directors, or of individuals exercising similar functions, or (3) the
6 power to exercise, directly or indirectly, a controlling influence
7 over the management or policies of a company. However, for
8 purposes of the application of the definition of control as it relates
9 to credit unions, a credit union has a controlling influence over the
10 management or policies of a credit union service organization
11 (CUSO), as that term is defined by state or federal law or
12 regulation, if the CUSO is at least 67 percent owned by credit
13 unions. For purposes of the application of the definition of control
14 to a financial institution subject to regulation by the United States
15 Securities and Exchange Commission, a person who owns
16 beneficially, either directly or through one or more controlled
17 companies, more than 25 percent of the voting securities of a
18 company is presumed to control the company, and a person who
19 does not own more than 25 percent of the voting securities of a
20 company is presumed not to control the company, and a
21 presumption regarding control may be rebutted by evidence, but
22 in the case of an investment company, the presumption shall
23 continue until the United States Securities and Exchange
24 Commission makes a decision to the contrary according to the
25 procedures described in Section 2(a)(9) of the federal Investment
26 Company Act of 1940.

27 (h) “Necessary to effect, administer, or enforce” means the
28 following:

29 (1) The disclosure is required, or is a usual, appropriate, or
30 acceptable method to carry out the transaction or the product or
31 service business of which the transaction is a part, and record or
32 service or maintain the consumer’s account in the ordinary course
33 of providing the financial service or financial product, or to
34 administer or service benefits or claims relating to the transaction
35 or the product or service business of which it is a part, and includes
36 the following:

37 (A) Providing the consumer or the consumer’s agent or broker
38 with a confirmation, statement, or other record of the transaction,
39 or information on the status or value of the financial service or
40 financial product.

1 (B) The accrual or recognition of incentives or bonuses
2 associated with the transaction or communications to eligible
3 existing consumers of the financial institution regarding the
4 availability of those incentives and bonuses that are provided by
5 the financial institution or another party.

6 (2) The disclosure is required or is one of the lawful or
7 appropriate methods to enforce the rights of the financial
8 institution or of other persons engaged in carrying out the financial
9 transaction or providing the product or service.

10 (3) The disclosure is required, or is a usual, appropriate, or
11 acceptable method for insurance underwriting or the placement of
12 insurance products by licensed agents and brokers with authorized
13 insurance companies at the consumer's request, for reinsurance,
14 stop loss insurance, or excess loss insurance purposes, or for any
15 of the following purposes as they relate to a consumer's insurance:

16 (A) Account administration.

17 (B) Reporting, investigating, or preventing fraud or material
18 misrepresentation.

19 (C) Processing premium payments.

20 (D) Processing insurance claims.

21 (E) Administering insurance benefits, including utilization
22 review activities.

23 (F) Participating in research projects.

24 (G) As otherwise required or specifically permitted by federal
25 or state law.

26 (4) The disclosure is required, or is a usual, appropriate, or
27 acceptable method, in connection with the following:

28 (A) The authorization, settlement, billing, processing,
29 clearing, transferring, reconciling, or collection of amounts
30 charged, debited, or otherwise paid using a debit, credit or other
31 payment card, check, or account number, or by other payment
32 means.

33 (B) The transfer of receivables, accounts, or interests therein.

34 (C) The audit of debit, credit, or other payment information.

35 (i) "Financial product or service" means any product or
36 service that a financial holding company could offer by engaging
37 in an activity that is financial in nature or incidental to a financial
38 activity under subsection (k) of Section 1843 of Title 12 of the
39 United States Code (the United States Bank Holding Company Act
40 of 1956). Financial service includes a financial institution's

1 evaluation or brokerage of information that the financial
2 institution collects in connection with a request or an application
3 from a consumer for a financial product or service.

4 (j) “Clear and conspicuous” means that a notice is reasonably
5 understandable and designed to call attention to the nature and
6 significance of the information contained in the notice.

7 (k) “Widely distributed media” means media available to the
8 general public and includes a telephone book, a television or radio
9 program, a newspaper, or a Web site that is available to the general
10 public on an unrestricted basis.

11 4053. (a) A financial institution shall not disclose to, or share
12 a consumer’s nonpublic personal information with, any
13 nonaffiliated third party, unless the financial institution has
14 provided written notice pursuant to subdivision (c) to the
15 consumer to whom the nonpublic personal information relates and
16 unless the financial institution has obtained a consent
17 acknowledgment from the consumer pursuant to subdivision (c)
18 that authorizes the financial institution to disclose or share the
19 nonpublic personal information. Nothing in this section shall
20 prohibit the disclosure of nonpublic personal information as
21 allowed in Section 4056. A financial institution shall not deny a
22 consumer a financial product or a financial service because the
23 consumer has not provided the consent required by this
24 subdivision to authorize the financial institution to disclose or
25 share his or her nonpublic personal information with any
26 nonaffiliated third party. Nothing in this section is intended to
27 prohibit a financial institution from offering incentives to elicit a
28 specific response to the notice.

29 (b) (1) A financial institution shall not disclose to, or share a
30 consumer’s nonpublic personal information with, an affiliate
31 unless the financial institution clearly and conspicuously notifies
32 the consumer annually in writing pursuant to subdivision (c) that
33 the nonpublic personal information may be disclosed to an affiliate
34 of the financial institution and the consumer has not directed that
35 the nonpublic personal information not be disclosed. A financial
36 institution does not disclose information to, or share information
37 with, its affiliate merely because information is maintained in
38 common information systems or databases, and employees of the
39 financial institution and its affiliate have access to those common
40 information systems or databases, or a consumer accesses a Web



1 site jointly operated or maintained under a common name by or on
2 behalf of the financial institution and its affiliate, provided that
3 nonpublic personal information is used or otherwise disclosed
4 only as permitted by this division.

5 (2) Subdivision (a) shall not prohibit the release of nonpublic
6 personal information by a financial institution with whom the
7 consumer has a relationship to a nonaffiliated financial institution
8 for purposes of jointly offering a financial product or financial
9 service pursuant to a written agreement with the financial
10 institution that receives the nonpublic personal information
11 provided that all of the following requirements are met:

12 (A) The financial product or service offered is a product or
13 service of, and is provided by, at least one of the financial
14 institutions that is a party to the written agreement.

15 (B) The financial product or service is jointly offered,
16 endorsed, or sponsored, and clearly and conspicuously identifies
17 for the consumer the financial institutions that release the
18 nonpublic personal information and the financial institutions that
19 receive that information.

20 (C) The written agreement provides that the financial
21 institution that receives that nonpublic personal information is
22 required to maintain the confidentiality of the information and is
23 prohibited from disclosing or using the information other than to
24 carry out the joint offering or servicing of a financial product or
25 financial service that is the subject of the written agreement.

26 (D) The financial institution that releases the nonpublic
27 personal information has complied with subdivision (c) and the
28 consumer has not directed that the nonpublic personal information
29 not be disclosed. The financial institution may, at its option,
30 choose instead to comply with the requirements of subdivision (a).

31 (E) Notwithstanding this section, until January 1, 2005, a
32 financial institution may disclose nonpublic personal information
33 to a nonaffiliated financial institution pursuant to a preexisting
34 contract with the nonaffiliated financial institution, for purposes
35 of offering a financial product or financial service, if that contract
36 was entered into on or before January 1, 2004. Beginning on
37 January 1, 2005, no nonpublic personal information may be
38 disclosed pursuant to that contract unless all the requirements of
39 this subdivision are met.



(3) Nothing in this subdivision shall prohibit a financial institution from disclosing or sharing nonpublic personal information as otherwise specifically permitted by this division.

(c) (1) The form set forth in this subdivision or one substantially similar shall be sent by the financial institution to the consumer so that the consumer may make a decision and provide direction to the financial institution regarding the sharing of his or her nonpublic personal information. A form shall not be deemed substantially similar for purposes of this subdivision unless at least all of the following requirements are met:

(A) The form uses the same title (“IMPORTANT PRIVACY CHOICES FOR CALIFORNIANS”) and headers (headings designated in all capital letters in the form set forth below, such as “SHARING INFORMATION WITH AFFILIATED COMPANIES”).

(B) The titles and headers in the form are clearly and conspicuously displayed, and no text in the form is smaller than 10-point type.

(C) The form is a separate document.

(2) (A) None of the instructional items appearing in parentheses in the form set forth below shall appear in the form provided to the consumer, as those items are for explanation purposes only. If a financial institution does not disclose or share nonpublic personal information as described in any one or more of the first three headers of the form, the financial institution is not required to include the applicable header or headers, and the accompanying information and box, in the form it provides pursuant to this subdivision.

IMPORTANT PRIVACY CHOICES FOR CALIFORNIANS

California consumers have rights beyond those offered under federal law to control the sharing of some personal information by financial institutions. Please read the following information carefully before making your choices below.

Consumers have the following rights to restrict the sharing of personal and financial information with affiliates (companies we own or control) and nonaffiliated third parties:

SHARING INFORMATION WITH AFFILIATED COMPANIES: Unless you prohibit us from doing so, we may

1 share personal and financial information about you with our
2 affiliates.
3 () I prohibit you from sharing personal and financial information
4 with affiliated companies.
5 SHARING INFORMATION WITH FINANCIAL COMPANIES
6 WITH WHOM WE CONTRACT: Unless you prohibit us from
7 doing so, we may share personal and financial information about
8 you with nonaffiliated financial companies with whom we
9 contract to provide financial products and services.
10 () I prohibit you from sharing personal and financial information
11 with financial companies with whom you contract to provide
12 financial products and services.
13 SHARING INFORMATION WITH NONAFFILIATED
14 COMPANIES: Unless you authorize us to do so, we may not share
15 personal and financial information about you with third party
16 companies with whom we have not entered into a contract.
17 () I authorize you to share my personal and financial information
18 with nonaffiliated companies.
19 I WANT TO RESTRICT THE SHARING OF MY
20 INFORMATION TO THE GREATEST EXTENT ALLOWED
21 BY LAW.
22 () I prohibit you from sharing my personal and financial
23 information with affiliates, nonaffiliated financial institutions, or
24 other third parties. This may lead to my being offered fewer
25 products and services.
26 Nothing in this form prohibits the sharing of information as
27 necessary to administer your account or policy or as allowed by,
28 or required to comply with, state or federal law, nor does it prohibit
29 us from sending you information to market other products or
30 services.
31 You may return this form at any time and your choices will remain
32 in effect unless you request a change. However, if we do not hear
33 from you within 45 days of sending this notice to you, we may
34 share some of your information with affiliated companies and
35 other nonaffiliated financial institutions with whom we have
36 contracts.
37



Name: _____
 Account or Policy Number(s): _____ [to be filled in by consumer]
 Signature: _____

To exercise your choices do one of the following:

- (1) Fill out, sign, and send back this form to us using the envelope provided (you may want to make a copy for your records); [or]
- (2) Call this toll-free number (800)xxx-xxxx; or (xxx)xxx-xxxx; [or]
- (3) Reply electronically by contacting us through the following Internet option: xxx@xxx.

(B) If a consumer selects the box associated with the header restricting information sharing to the greatest extent allowed by law, that choice shall supersede all other choices.

(C) A financial institution shall not be in violation of this subdivision solely because it includes in the form one or more brief examples or explanations of the purpose or purposes, or context, within which information will be shared.

(D) The outside of the envelope in which the form is sent shall clearly state in 16-point boldface type “IMPORTANT PRIVACY CHOICES,” except that a financial institution sending the form to a consumer in the same envelope as a bill or account statement does not have to include the wording “IMPORTANT PRIVACY CHOICES” on that envelope. The form shall be sent in any of the following ways:

(i) With a bill or other statement of account, in which case the information required by Title V of the Gramm-Leach-Bliley Act may also be included.

(ii) As a separate notice or with the information required by Title V of the Gramm-Leach-Bliley Act, and including only information related to privacy.

(iii) With any other mailing, in which case it shall be the first page of the mailing.

(3) The consumer shall be provided an opportunity, before disclosure of information pursuant to this division, for 45 days from the date of postmark or other postal verification of mailing of the initial notice required by this subdivision, to direct that the nonpublic personal information not be disclosed except as otherwise permitted by this division. A consumer may direct at any time that his or her nonpublic personal information not be

1 disclosed, except as otherwise permitted by this division. A
2 financial institution shall comply with a consumer's directions
3 concerning the sharing of his or her nonpublic personal
4 information within 45 days of receipt by the financial institution.
5 When a consumer directs that nonpublic personal information not
6 be disclosed, that direction is in effect until otherwise stated by the
7 consumer.

8 (4) A financial institution shall not deny a consumer a financial
9 product or a financial service because the consumer has directed
10 pursuant to subdivision (b) that his or her nonpublic personal
11 information not be disclosed provided that nothing in this section
12 shall prohibit the disclosure of nonpublic personal information
13 allowed by Section 4056. Nothing in this section is intended to
14 prohibit a financial institution from offering incentives to elicit a
15 specific response to the notice.

16 (5) A financial institution may elect to comply with the
17 requirements of subdivision (a) with respect to disclosure of
18 nonpublic personal information to an affiliate or with respect to
19 nonpublic personal information disclosed pursuant to paragraph
20 (2) of subdivision (b).

21 (6) If a financial institution does not have a continuing
22 relationship with a consumer other than the initial transaction in
23 which the product or service is provided, no annual disclosure
24 requirement exists pursuant to this section as long as the financial
25 institution provides the consumer with the form required by this
26 section at the time of the initial transaction. As used in this section,
27 "annually" means at least once in any period of 12 consecutive
28 months during which that relationship exists. The financial
29 institution may define the 12-consecutive-month period, but shall
30 apply it to the consumer on a consistent basis. If, for example, a
31 financial institution defines the 12-consecutive-month period as a
32 calendar year and provides the annual notice to the consumer once
33 in each calendar year, it complies with the requirement to send the
34 notice annually.

35 (7) A financial institution with assets in excess of twenty-five
36 million dollars (\$25,000,000) shall include a self-addressed
37 postage paid return envelope with the notice. A financial
38 institution with assets of up to and including twenty-five million
39 dollars (\$25,000,000) shall include a self-addressed return
40 envelope with the notice. In addition to the return envelope



1 required by this paragraph, a financial institution may offer
2 additional means for consumers to communicate their privacy
3 choices, including, but not limited to, calling a toll-free number,
4 sending a facsimile, or using electronic means. A financial
5 institution shall clearly and conspicuously disclose in the form
6 required by this subdivision the information necessary to direct the
7 consumer on how to communicate his or her choices, including the
8 toll-free or facsimile number or Web site address that may be used,
9 if those means of communication are offered by the financial
10 institution.

11 (8) A financial institution shall file a copy of the initial notice
12 or notices required by this subdivision with the Attorney General.
13 No subsequent filing is required until the financial institution
14 modifies the notice, in which case a copy of the notice as modified
15 shall be filed with the Attorney General. Nothing in this paragraph
16 shall be construed to require that a financial institution file with the
17 Attorney General a copy of the notice or notices it provides to
18 consumers more often than once in each calendar year. The
19 interpretations of functional regulators regarding the form
20 required by this subdivision are not entitled to deference by a
21 court.

22 (d) Nothing in this division shall prohibit a financial institution
23 from marketing its own products and services or the products and
24 services of affiliates or nonaffiliated third parties to customers of
25 the financial institution as long as (1) nonpublic personal
26 information is not disclosed in connection with the delivery of the
27 applicable marketing materials to those customers except as
28 permitted by Section 4056 and (2) in cases in which the applicable
29 nonaffiliated third party may extrapolate nonpublic personal
30 information about the consumer responding to those marketing
31 materials, the applicable nonaffiliated third party has signed a
32 contract with the financial institution under the terms of which (A)
33 the nonaffiliated third party is prohibited from retaining or using
34 that information for any purpose, and (B) the financial institution
35 has the right by audit, inspections, or other means to verify the
36 nonaffiliated third party's compliance with that contract.

37 4053.5. Except as otherwise provided in this division, an
38 entity that receives nonpublic personal information from a
39 financial institution under this division shall not disclose this
40 information to any other entity, unless the disclosure would be



1 lawful if made directly to the other entity by the financial
2 institution. An entity that receives nonpublic personal information
3 pursuant to any exception set forth in Section 4056 shall not use
4 or disclose the information except in the ordinary course of
5 business to carry out the activity covered by the exception under
6 which the information was received.

7 4054. (a) Nothing in this division shall require a financial
8 institution to provide a written notice to a consumer pursuant to
9 Section 4053 if the financial institution does not disclose
10 nonpublic personal information to any nonaffiliated third party or
11 to any affiliate, except as allowed in this division.

12 (b) A notice provided to a member of a household pursuant to
13 Section 4053 shall be considered notice to all members of that
14 household unless that household contains another individual who
15 also has a separate account with the financial institution.

16 (c) (1) The requirement to send a written notice to a consumer
17 may be fulfilled by electronic means if the following requirements
18 are met:

19 (A) The notice, and the manner in which it is sent, meets all of
20 the requirements for notices that are required by law to be in
21 writing, as set forth in Section 101 of the federal Electronic
22 Signatures in Global and National Commerce Act.

23 (B) All other requirements applicable to the notice, as set forth
24 in this division, are met, including but not limited to, requirements
25 concerning content, timing, form, and delivery.

26 (C) The notice is delivered to the consumer in a form the
27 consumer may keep.

28 (2) A notice that is made available to a consumer, and is not
29 delivered to the consumer, does not satisfy the requirements of
30 paragraph (1).

31 (3) Any electronic consumer reply to an electronic notice sent
32 pursuant to this division is effective. A person that electronically
33 sends a notice required by this division to a consumer may not by
34 contract, or otherwise, eliminate the effectiveness of the
35 consumer's electronic reply.

36 (4) This division modifies the provisions of Section 101 of the
37 federal Electronic Signatures in Global and National Commerce
38 Act. However, it does not modify, limit, or supersede the
39 provisions of subsection (c), (d), (e), (f), or (h) of Section 101 of
40 the federal Electronic Signatures in Global and National



Commerce Act, nor does it authorize electronic delivery of any notice of the type described in subsection (b) of Section 103 of that federal act.

4054.6. When a financial institution and a membership organization, tax-exempt organization, not-for-profit organization, or a professional sports team that is not a financial institution have an agreement to issue a credit card in the name of the membership organization, tax-exempt organization, not-for-profit organization, or the professional sports team (“affinity card”), the financial institution shall be permitted to disclose to the entity in whose name the card is issued, the names and addresses, including electronic mail addresses, of the financial institution’s consumers in receipt of the affinity card if all of the following requirements are satisfied:

(a) The financial institution has provided the notice required by this division to the consumer, and the consumer has not directed that confidential consumer information not be disclosed.

(b) The financial institution has a contractual agreement with the membership organization, tax-exempt organization, not-for-profit organization, or professional sports team that requires the entity in whose name the affinity card is issued to maintain the confidentiality of the nonpublic personal information and prohibits the entity in whose name the affinity card is issued from using the information for any purposes other than verifying membership, verifying the affinity cardholder’s address, or offering the entity’s own products or services to the cardholder. Nothing in this section shall prohibit the disclosure of nonpublic personal information allowed by Section 4056.

(c) The customer list is not disclosed in any way that reveals or permits extrapolation of any additional nonpublic personal information about any customer on the list.

(d) If the entity in whose name the card is issued sends any message to any electronic mail addresses obtained pursuant to this section, the message shall include at least both of the following:

(1) The identity of the sender of the message.

(2) A cost-free means for the recipient to notify the sender not to electronically mail any further messages to the recipient.

4056. (a) This division shall not apply to information that is not personally identifiable to a particular person.



(b) Sections 4053 and 4054 shall not prohibit the release of nonpublic personal information under the following circumstances:

(1) The nonpublic personal information is necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with servicing or processing a financial product or service requested or authorized by the consumer, or in connection with maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of that entity, or in connection with a proposed or actual securitization or secondary market sale, including sales of servicing rights, or similar transactions related to a transaction of the consumer.

(2) The nonpublic personal information is released with the consent of or at the direction of the consumer.

(3) The nonpublic personal information is:

(A) Released to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein.

(B) Released to protect against or prevent actual or potential fraud, identity theft, unauthorized transactions, claims, or other liability.

(C) Released for required institutional risk control, or for resolving customer disputes or inquiries.

(D) Released to persons holding a legal or beneficial interest relating to the consumer, including for purposes of debt collection.

(E) Released to persons acting in a fiduciary or representative capacity on behalf of the consumer.

(4) The nonpublic personal information is released to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors.

(5) The nonpublic personal information is released to the extent specifically required or specifically permitted under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. Sec. 3401 et seq.), to law enforcement agencies, including a federal functional regulator, the

1 Secretary of the Treasury with respect to subchapter II of Chapter
2 53 of Title 31, and Chapter 2 of Title I of Public Law 91-508 (12
3 U.S.C. Secs. 1951-1959), the California Department of Insurance
4 or other state insurance regulators, or the Federal Trade
5 Commission, and self-regulatory organizations, or for an
6 investigation on a matter related to public safety.

7 (6) The nonpublic personal information is released in
8 connection with a proposed or actual sale, merger, transfer, or
9 exchange of all or a portion of a business or operating unit if the
10 disclosure of nonpublic personal information concerns solely
11 consumers of the business or unit.

12 (7) The nonpublic personal information is released to comply
13 with federal, state, or local laws, rules, and other applicable legal
14 requirements; to comply with a properly authorized civil,
15 criminal, administrative, or regulatory investigation or subpoena
16 or summons by federal, state, or local authorities; or to respond to
17 judicial process or government regulatory authorities having
18 jurisdiction over the financial institution for examination,
19 compliance, or other purposes as authorized by law.

20 (8) When a financial institution is reporting a known or
21 suspected instance of elder or dependent adult financial abuse or
22 is cooperating with a local adult protective services agency
23 investigation of known or suspected elder or dependent adult
24 financial abuse pursuant to Article 3 (commencing with Section
25 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and
26 Institutions Code.

27 (9) The nonpublic personal information is released to an
28 affiliate or a nonaffiliated third party in order for the affiliate or
29 nonaffiliated third party to perform services, such as mailing
30 services, data processing or analysis, or customer surveys, on
31 behalf of the financial institution, provided that all of the following
32 requirements are met:

33 (A) The services to be performed by the affiliate or
34 nonaffiliated third party could lawfully be performed by the
35 financial institution.

36 (B) There is a written contract between the affiliate or
37 nonaffiliated third party and the financial institution that prohibits
38 the affiliate or nonaffiliated third party, as the case may be, from
39 disclosing or using the nonpublic personal information other than

1 to carry out the purpose for which the financial institution
2 disclosed the information, as set forth in the written contract.

3 (C) The nonpublic personal information provided to the
4 affiliate or nonaffiliated third party is limited to that which is
5 reasonably necessary for the affiliate or nonaffiliated third party
6 to perform the services contracted for on behalf of the financial
7 institution.

8 (D) The financial institution does not receive any payment
9 from or through the affiliate or nonaffiliated third party in
10 connection with, or as a result of, the release of the nonpublic
11 personal information.

12 (10) The nonpublic personal information is released to identify
13 or locate missing and abducted children, witnesses, criminals and
14 fugitives, parties to lawsuits, parents delinquent in child support
15 payments, organ and bone marrow donors, pension fund
16 beneficiaries, and missing heirs.

17 (11) The nonpublic personal information is released to a real
18 estate appraiser licensed or certified by the state for submission to
19 central data repositories such as the California Market Data
20 Cooperative, and the nonpublic personal information is compiled
21 strictly to complete other real estate appraisals and is not used for
22 any other purpose.

23 (12) The nonpublic personal information is released as
24 required by Title III of the federal United and Strengthening
25 America by Providing Appropriate Tools Required to Intercept
26 and Obstruct Terrorism Act of 2001 (USA Patriot Act; P.L.
27 107-56).

28 (c) Nothing in this division is intended to change existing law
29 relating to access by law enforcement agencies to information held
30 by financial institutions.

31 4056.5. (a) The provisions of this division do not apply to any
32 person or entity that meets the requirements of paragraph (1) or (2)
33 below. However, when nonpublic personal information is being or
34 will be shared by a person or entity meeting the requirements of
35 paragraph (1) or (2) with an affiliate or nonaffiliated third party,
36 this division shall apply.

37 (1) The person or entity is licensed in one or both of the
38 following categories and is acting within the scope of the
39 respective license or certificate:



(A) As an insurance producer, licensed pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Division 1 of the Insurance Code, as a registered investment adviser pursuant to Chapter 3 (commencing with Section 25230) of Part 3 of Division 1 of Title 4 of the Corporations Code, or as an investment adviser pursuant to Section 202(a)(11) of the federal Investment Advisers Act of 1940.

(B) Is licensed to sell securities by the National Association of Securities Dealers (NASD).

(2) The person or entity meets the requirements in paragraph (1) and has a written contractual agreement with another person or entity described in paragraph (1) and the contract clearly and explicitly includes the following:

(A) The rights and obligations between the licensees arising out of the business relationship relating to insurance or securities transactions.

(B) An explicit limitation on the use of nonpublic personal information about a consumer to transactions authorized by the contract and permitted pursuant to this division.

(C) A requirement that transactions specified in the contract fall within the scope of activities permitted by the licenses of the parties.

(b) The restrictions on disclosure and use of nonpublic personal information, and the requirement for notification and disclosure provided in this division, shall not limit the ability of insurance producers and brokers to respond to written or electronic, including telephone, requests from consumers seeking price quotes on insurance products and services or to obtain competitive quotes to renew an existing insurance contract, provided that any nonpublic personal information disclosed pursuant to this subdivision shall not be used or disclosed except in the ordinary course of business in order to obtain those quotes.

4057. (a) An entity that negligently discloses or shares nonpublic personal information in violation of this division shall be liable, irrespective of the amount of damages suffered by the consumer as a result of that violation, for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation. However, the total civil penalty awarded pursuant to this

1 subdivision shall not exceed five hundred thousand dollars
2 (\$500,000) per occurrence.

3 (b) An entity that knowingly and willfully obtains, discloses,
4 shares, or uses nonpublic personal information in violation of this
5 division shall be liable for a civil penalty not to exceed two
6 thousand five hundred dollars (\$2,500) per violation.

7 (c) In determining the penalty to be assessed pursuant to a
8 violation of this division, the court shall take into account the
9 following factors:

10 (1) The total assets and net worth of the violating entity.

11 (2) The nature and seriousness of the violation.

12 (3) The persistence of the violation, including any attempts to
13 correct the situation leading to the violation.

14 (4) The length of time over which the violation occurred.

15 (5) The number of times the entity has violated this division.

16 (6) The harm caused to consumers by the violation.

17 (7) The level of proceeds derived from the violation.

18 (8) The impact of possible penalties on the overall fiscal
19 solvency of the violating entity.

20 (d) In the event a violation of this division results in the identity
21 theft of a consumer, as defined by Section 530.5 of the Penal Code,
22 the civil penalties set forth in this section shall be doubled.

23 (e) This section shall become operative on and after July 1,
24 2004, for acts in violation of this division that occur on and after
25 July 1, 2004.

26 4058. Nothing in this division shall be construed as altering or
27 annulling the authority of any department or agency of the state to
28 regulate any financial institution subject to its jurisdiction.

29 4058.5. This division shall preempt and be exclusive of all
30 local agency ordinances and regulations relating to the use and
31 sharing of nonpublic personal information by financial
32 institutions. This section shall apply both prospectively and
33 retroactively.

34 4059. The provisions of this division shall be severable, and
35 if any phrase, clause, sentence, or provision is declared to be
36 invalid or is preempted by federal law or regulation, the validity
37 of the remainder of this division shall not be affected thereby.

